IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO.590 OF 2000

1. Sharad Prabhakar Ambadkar
   Address Lupin Lab Ltd.

 (a) Biotech Division Marol Maroshi,
     Road Gal Nos. 26 to 30 and 43
     Raj Industrial Compex, Military,
     Lane Mumbai - 400 059.

 (b) Hotel Chetak, 1700/2 Opp.
     Lakaki Lane Model Coloney,
     Shivajinagar, Pune.

2. Prof. Prabhakar Mhalaskant
   Ambadkar, C-3 Vikram Baug
   Pratapganj Vadodara 390 002
   Gujrat State. ..Petitioners.

V/s

1. Aurn Shardram Deshpande,
   R/o A 19, Yashodhan,
   State Bank of India,
   Karmachari "Akshar" Grihasanstha
   Limited Taware Colony,
   Pune 411009.

2. The State of Maharashtra. ..Respondents.

Shri R.D. Soni for the petitioners.

Shri B.R. Patil, A.P.P. for the State.

CORAM : ANOOP V.MOHTA, J.

DATE : 1ST OCTOBER, 2004.

ORAl JUDGMENT (**PER ANOOP V. MOHTA,** J.)

. The petitioner, by invoking the article 227 of Constitution of India and section 482 of Criminal Procedure code have prayed that the order of issuance of

process for the offence under section 420 of Indian Penal Code by the Judicial Magistrate, F.C., Pune, in Criminal private Complaint Case No. 86/1998, dated 29.4.1998, be quashed and set aside.

2. Respondent No.1, the original complainant, has filed a complaint under section 420,499 r/w section 34 of Indian Penal Code, against petitioners 1 and 2 The basic case has been that petitioner No.1, the son of petitioner No.2, was engaged to Miss Arusha, daughter of respondent No.1, on 8th April, 1997,at Pune. The marriage was fixed on 12th November, 1997. Respondent No.1 then proceeded to make further arrangement for the marriage and spent Rs. 60,000/- to Rs. 70,000/- for purchasing clothes, articles, advance for booking the Mangal Karalaya, wedding cards, ornaments and in making telephone calls to various places. Petitioner No.1 and the daughter of respondent No.1 were meeting regularly, till the month of August, 1997. On 24th August, 1997, the daughter of respondent No.1 went for her bank training to Aurangabad. Petitioner No.1 enquired about her. Petitioner No.1 thereafter, called her directly at Aurangabad on 25th August, 1997 and surprisingly refused to marry. Petitioner No.1, had made telephone calls at

the house of respondent NO.1, complainant, and confirmed the said decision. As alleged the petitioners were unable to explain the reason for such refusal of the marriage. On 3.10.1997 complainant, had sent a legal notice and demanded the amount spent for marriage preparation. The petitioner did not reply to the same. Therefore, on 18th February, 1998, a complaint was lodged against the petitioners in Parvati Darshan Police chowky. As no congizance was taken by the police, complainant was constrained to file the present private complaint before the Judicial Magistrate, F.C., Pune and registered as Criminal Case No.86/1998.

3. The basic reason for lodging complaint under section 420 r/w section 499 of I.P.C. appears to be that because of the alleged deceitful intention of petitioner No.1, they have suffered humiliation and mental torture. They have spent nearly Rs. 70,000/- in preparation for the marriage. Petitioner No.2 has been made a party, being the father of petitioner No.1. It has been alleged that petitioner No.2 failed to convince or persue his son against the breaking of the engagement. The averments of defamation have also been made.

4. The learned Magistrate after perusing the complaint and relevant documents and record, had issued the process on 29/4/1998, only under section 420 of I.P.C. The learned Magistrate held that a prima facie case was made out against both the accused.

5. The petitioners therefore, have preferred this petition on 22nd March, 2000. Despite the notices none appeared for the respondent NO.1, though duly served. The petition was admitted on 11/7/2002 and interim stay in terms of prayer clause (c) has been in operation since then.

6. Even today none present for respondent No.1. Heard Mr. Soni learned advocate for the petitioners and Mr. Patil, learned A.P.P. for the State-respondent No.2.

7. The ingredients for the offence of cheating are provided in Section 415 to 420 of I.P.C. It is necessary to prove that the accused has deceived and induced a person with fraudulent, dishonest intention and the person so induced, has delivered and or

consented to retain some property or induced to Act or omit to do some thing and such act or omission causes or is likely to cause damage or harm to that person in body, mind or reputation. Mens rea is also necessary.

8. In the present case there is nothing which entitles the complainant to proceed against the petitioner under section 420 of I.P.C. The complaint, admittedly, has not been filed by the daughter of the complainant with whom petitioner No.1 was engaged. Petitioner No.2 is the father of petitioner No.1. The allegation against petitioner NO.2 has been that he was unable to convince petitioner No.1 and to give reason to break the engagement. On the face of the complaint itself it is clear that the complainant has incurred expenses after the engagement. The expenses have been incurred by the complainant at their end. There is no wrongful loss to or gain by the petitioners. No case is made out that the petitioners have dishonestly earned and or received some property out of this engagement. The grievance of the complainant with respect to the expenses incurred is of at the most civil in nature. It does not fall within the ambit of ingredients of cheating as per sections 415 to 420 of I.P.C.

Therefore, the criminal prosecution cannot be proceeded against the petitioners. There is no case of any criminal conspiracy or misrepresentation or mistrust made out in the complaint. The things were smooth between petitioner No.1 and the daughter of respondent No.1 till the break of the engagement on 24.8.1997. The complainant's case is that in spite of the legal notice, as money was not paid the petitioners have committed the offence of cheating. Considering the ingredients as required to be invoked as per the above provisions, the issuance of the process on the private complaint in this case is unjustified and incorrect.

9. Therefore, the order of issuance of process dated 29.4.1998 and related Criminal Case No.86/1998 are quashed and set aside. Petition is allowed accordingly. No order as to costs.

[ANOOP V. MOHTA, J.]